

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Eunice Hernandez,

Respondent.

HUDOHA 13-AF-0159-DB-003

September 19, 2014

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BEFORE: The Honorable Alexander Fernández, Administrative Law Judge

FINDINGS OF FACT AND RECOMMENDED DECISION

This matter is referred to the Court by the sanctioning official to issue findings of fact and to make a recommended decision. 2 C.F.R. § 2424.1130(b).

On August 20, 2013, Eunice Hernandez (“Respondent”) requested a hearing regarding a Notice of Limited Denial of Participation issued on April 26, 2013. Pursuant to the Notice of Limited Denial of Participation, Respondent was immediately precluded from participating, for a period of twelve months, in “all single family housing programs administered by the Assistant Secretary for Housing\FHA Commissioner.”

Procedural History

On August 22, 2013, Respondent’s *Hearing Request* was forwarded to the Court. By *Revised Notice of Hearing and Order*, dated October 23, 2013, this matter was rescheduled for a hearing to commence on April 8, 2013, and all pre-trial scheduling deadlines were reset. While the Court could not grant Respondent’s request for the hearing to be in Puerto Rico, the Court made considerable efforts to arrange for video conferencing so that the parties would not have to travel to the hearing.

After numerous extensions, Respondent's *Answer* was filed on November 29, 2013. In the *Answer*, Respondent claimed she acquired loan documents from the borrowers and, to her knowledge, the documents were legitimate.

On April 7, 2014, after it was apparent that neither party had filed exhibits or pre-hearing statements in compliance with the *Revised Notice of Hearing and Order*, the Court was forced to reschedule the hearing for May 13, 2014. Additionally, in an effort to avoid further delays, the Court required that the parties travel to Washington, D.C. for the hearing. Despite this order, Counsel for Respondent indicated that she and her client refused to travel to Washington, D.C. to have this matter adjudicated.

The hearing in this matter was held on May 13, 2014, in Washington, D.C. The testimony of the following witnesses was received: Heidi Sanchez, Senior Housing Specialist for HUD; Nora Kittrel, Supervisory Senior Housing Specialist for HUD; and Dan Rogers, III, Director of the Atlanta Homeownership Center for HUD. Respondent did not appear at the hearing, and therefore no witnesses or exhibits were presented in support of her position.

Following the Court's receipt of the transcript on June 5, 2014, the parties were ordered to file post-hearing briefs on or before July 11, 2014, and responses to the post-hearing briefs on or before July 25, 2014. The Government timely filed its brief on July 2, 2014. To date, no post-hearing brief or response brief has been filed by Respondent's Counsel. Accordingly, this matter is ripe for decision.¹

¹ The failure of Respondent's Counsel to file a post-hearing brief and/or response brief is not surprising. Throughout the course of this litigation, Respondent's Counsel has taken a passive, if not lackadaisical, approach to representing her client's interests. As noted in the *Order Denying Motion to Change Hearing Location*, dated April 29, 2014,

Save for the two extensions Respondent's counsel was granted to file an answer to HUD's rather simplistic allegations, there is no indication that Respondent's counsel has complied with the deadlines imposed by the Court . . . even Respondent's response to the *Motion for Summary Judgment* was untimely. After failing to file a pre-hearing statement or hearing exhibits with the Court, Respondent's counsel also refused to make joint stipulations as to any facts or exhibits despite being ordered to do so.

Further, as noted in the *Order on Respondent's Motion About Hearing Set for May 13, 2014*, dated May 7, 2014,

[Respondent's] Counsel failed to file a pre-hearing statement or exhibit binders, and she failed to timely request an interpreter for the hearing. Moreover, Respondent's Counsel has shown a willingness to disregard the orders of this Court. None of Counsel's filings were appropriately named . . . On numerous occasions, HUD attempted to confer with Respondent's Counsel to make a good faith effort to stipulate to facts. However, Respondent's Counsel only responded once, via e-mail, stating "[t]here is nothing to stipulate in this case." Only after the parties were informed that a failure to stipulate could result in sanctions, did Respondent's Counsel agree to stipulate certain facts. Similarly, Respondent's Counsel refused to respond to HUD's requests to confer as to joint exhibits to reduce duplication. To this day, Respondent's Counsel has not filed any exhibits, nor identified which of HUD's exhibits could be used jointly.

Applicable Law

I. Responsibilities of FHA Loan Originators

HUD specifies that certain loan origination services must be performed by a Federal Housing Administration (“FHA”) approved lender or loan correspondent. HUD Mortgagee Letter 2008-17, at 1 (June 20, 2008). Such services include collecting financial information (i.e. tax returns and bank statements) and other related documents that are part of the application process; initiating or ordering necessary loan verification documents. Id. The HUD Handbook 4155.1 (“HUD Handbook”) sets forth the general documentation standards for FHA-approved lenders. HUD, MORTGAGE CREDIT ANALYSIS FOR MORTGAGE INSURANCE, HANDBOOK 4155.1 [hereinafter HUD HANDBOOK 4155.1]. Documents essential to the approval of a loan, such as income, employment, or asset documents, must be verified by the lender for authenticity. Id. at 1-B-7. Therefore, lenders are prohibited from accepting or using documents relating to the credit, employment, or income of borrowers that have been handled by, or transmitted from an interested third party. Id. at 1-B-5. A real estate agent is considered to be an “interested third party.” Id.

II. Issuance of a Limited Denial of Participation

FHA may impose sanctions upon an individual involved in FHA programs who demonstrates a lack of business responsibility. HUD, LENDER’S GUIDE TO THE SINGLE FAMILY MORTGAGE INSURANCE PROCESS, Handbook 4155.2 at 9-D-15. One such sanction is a limited denial of participation (“LDP”), which excludes the participation of a person from a specific program within a HUD field office’s geographic jurisdiction for a specific period of time. 2 C.F.R. § 2424.1100. An LDP may be issued against a person for failing to honor contractual obligations or failing to proceed in accordance with contract specifications or HUD regulations. 2 C.F.R. § 2424.1110(a)(4). An LDP may also be issued if the person has caused a false statement to be made for the purpose of influencing an action of HUD. 2 C.F.R. § 2424.1110(a)(10).

Findings of Fact

1. Eunice Hernandez (“Respondent”) has been in the Banking/Mortgage industry for 14 years.
2. Respondent’s Nationwide Mortgage Licensing System (NMLS) number is 306179. Her Puerto Rico Mortgage Loan Originator (“MLO”) number is 202.
3. Respondent was employed as a loan officer or mortgage loan originator at Money House Inc. (“Money House”) from May 2011 to September 2011.
4. Respondent was the loan officer for Idelmis Rodriquez Mercado (“Borrower One”).
5. Maribel Santiago was Borrower One’s real estate broker.
6. On June 14, 2011, Respondent e-mailed Ms. Santiago requesting the following

documentation for Borrower One:

- 1) Rent receipts and money orders for 6 months;
 - 2) Payment histories for a credit account with Digital Securities for the past six months;
 - 3) Evidence of payment for a cell phone in Borrower One's name for six months;
 - 4) Pay statement for the month of May;
 - 5) Payment of ASUME (child support) received during the past year;
 - 6) Copies of the child support documents or any legal document to support her claim of receiving child support payments;
 - 7) April and May bank statements; and
 - 8) Letters of explanation regarding:
 - (a) \$2,600 deposit made into a bank account with the cooperative
 - (b) Inquiries occurring in the month of February that appeared in the credit report
 - (c) Two accounts that were paid late.
7. In response, Ms. Santiago sent Respondent, that same day, two e-mails with the rent money orders and payment histories for Digital Securities as attachments.
8. On June 15, 2011, Respondent forwarded the June 14, 2011 e-mail, with attachments to Aly Mercado Acevedo, the loan processor.
9. On June 28, 2011, Ms. Santiago sent Respondent an e-mail that included an attachment describing a savings club to which Borrower One was contributing \$600 weekly.²
10. On June 29, 2011, Ms. Santiago sent Respondent an e-mail with an attachment reflecting \$700 monthly rent receipts.
11. Borrower One's Uniform Residential Loan Application ("URLA"), dated July 15, 2011, identified Respondent as the loan originator.
12. An Addendum that was attached to the URLA included the following certifications:
- B. The information contained in the Uniform Residential Loan Application and this Addendum was obtained directly from the borrower by an employee of the undersigned lender or its duly authorized agent and is true to the best of the lender's knowledge and belief.

...

² Community members often combine their resources into such a savings club, and then either on a weekly or monthly basis, the money moves from hand to hand as people contribute to the general fund. Such savings clubs are common in Central America, Latin America, and the Caribbean. The Court offers no opinion as to whether or not such a "club" constitutes sufficient evidence of assets.

D. The verification of employment and verification of deposits were requested and received by the lender or its duly authorized agent without passing through the hands of any third persons and are true to the best of the lender's knowledge and belief.

13. The Addendum to the URLA was signed by an employee of Money House.
14. Respondent was also the loan officer for Rosa Villaman Batista ("Borrower Two").
15. Ms. Santiago was the real estate broker for Borrower Two.
16. On June 22, 2011, Ms. Santiago sent Respondent an e-mail containing the Verification of Employment for Borrower Two.
17. On June 28, 2011, Ms. Santiago sent Borrower Two's pay statements to Respondent and Catherine Crespo, the loan processor.
18. Later that day, Ms. Santiago sent Respondent copies of paychecks issued by Borrower Two's employer.
19. On June 29, 2011, Ms. Santiago sent Respondent a copy of the account statement for a savings co-op in which Borrower Two participated.
20. On or about August 29, 2011, Money House discovered what appeared to be suspicious loan data in three of its FHA loans for which Respondent was the loan officer.
21. Following an internal investigation, on September 6, 2011, Money House contracted an outside fraud examiner to investigate the irregularities detected in the three loans closed and insured by the lender.
22. During the investigation, the fraud examiner interviewed Borrower One and Borrower Two, both of whom acknowledged giving Ms. Santiago their loan documents.
23. Neither Borrower One nor Borrower Two would confirm to the fraud examiner that the documents used to process their loans were the same documents given to Ms. Santiago.
24. At the conclusion of the investigation, the fraud examiner drafted the Money House, Inc. Irregularities Investigation Preliminary Report ("Money House Report") that included the fraud examiner's findings.
25. The Money House Report revealed that in two of the loans that Money House closed, there had been an improper handling of documents through the loan officer and the realtor.
26. Money House forwarded the Money House Report to HUD in compliance with the terms required for FHA program participation.

27. Also forwarded to HUD, as part of the Money House Report, were the e-mails between Respondent and Ms. Santiago referenced, *supra*.
28. Respondent received the Limited Denial of Participation, dated April 26, 2013.
29. At Respondent's request, HUD held a telephone conference with Respondent on June 28, 2013.
30. During the telephone conference, HUD asked Respondent whether she received the loan verification documents mentioned, *supra*, from Ms. Santiago.
31. Respondent refused to state affirmatively whether she had received the documents from Ms. Santiago, but explained that it was customary in Puerto Rico for the loan officer to receive such documents from the realtor and the borrower.
32. At the conclusion of the telephone conference, HUD informed Respondent that she could submit documentation in support of her position within 10 days.
33. On July 17, 2013, Respondent, through counsel, sent HUD an e-mail stating that Respondent would not submit the additional documentation she claimed in during the teleconference that she had in her possession.
34. On July 29, 2013, HUD sent Respondent an Affirmation of Limited Denial of Participation Issued April 26, 2013 ("Affirmation").
35. The Affirmation informed Respondent that upon review of the documents received from Money House and the information relayed during the June 29, 2013, telephone conference, HUD determined that Respondent's sanction would be affirmed.
36. On August 8, 2013, while the LDP was still in effect, Respondent originated a loan that closed September 30, 2013.
37. Prior to this case, there is no record of regulatory actions, claims, or complaints against Respondent in any jurisdiction.

Discussion

HUD alleges an LDP is warranted because Respondent accepted loan verification documents from Ms. Santiago in violation of HUD rules.

As noted, *supra*, HUD rules prohibit loan originators from accepting documents relating to credit, employment, or income of borrowers that have been handled by, or transmitted from, an interested third party. HUD HANDBOOK 4155.1, at 1-B-5. Violation of the rules may subject a person to an LDP. An LDP may also be issued to a person who has caused a false statement to be made for the purpose of influencing an action of HUD. 2 C.F.R. § 2424.1110(a)(10).

Here, Respondent solicited and accepted from Ms. Santiago loan receipts for rent payments, credit payment histories, and a savings club statement for Borrower One. Respondent also accepted from Ms. Santiago a verification of employment, pay statements, and an account statement for a savings co-op for Borrower Two. Ms. Santiago was the real estate broker for both Borrower One and Borrower Two and is, by definition, an interested third party. Respondent forwarded the documentation obtained from Ms. Santiago to loan processors employed by Money House, who in turn used the documents to approve Borrower One and Borrower Two for FHA loans. Accordingly, the Court finds Respondent failed to proceed in accordance with HUD rules and regulations by soliciting and accepting loan documents from an interested third party.

Further, by obtaining the documents from Ms. Santiago, Respondent caused a Money House employee to falsely certify that the documents were obtained directly from Borrower One. HUD relies on the accuracy of the lenders' certifications to insure FHA loans. Accordingly, the Court finds Respondent, by obtaining the documents for Borrower One and Borrower Two from Ms. Santiago and forwarding those documents to Money House loan processors, caused a false statement to be made for the purpose of influencing HUD action.

Sanctions

The Court may consider the factors listed at 2 C.F.R. § 180.860 in making its recommended decision. 2 C.F.R. § 2424.1130(c). Relevant factors include:

- (a) The actual or potential harm or impact that results or may result from the wrongdoing
- ...
- (f) Whether and to what extent [Respondent] planned, initiated, or carried out the wrongdoing;
- (g) Whether [Respondent has] accepted responsibility for the wrongdoing and recognize the seriousness of the misconduct that led to the cause for [the LDP]; and
- (s) Other factors that are appropriate to the circumstances of a particular case.

2 C.F.R. § 180.860.

Respondent accepted the loan documents from Ms. Santiago and forwarded them to Money House loan processors to use in approving Borrower One and Borrower Two for FHA loans. As found in the Money House Report, many of those documents were fraudulent. While there is no evidence that Respondent falsified those documents, had Respondent actually obtained the documents directly from Borrower One and Borrower Two, it is possible the likelihood for fraud would have been mitigated.

Respondent initiated the wrongdoing by soliciting the documents for Borrower One from Ms. Santiago. She also carried out the wrongdoing by accepting the documents from Ms. Santiago and then forwarding them to Money House loan processors. When confronted by HUD, Respondent attempted to justify her misconduct by claiming that it was common practice in Puerto Rico for loan originators to accept loan verification documents from realtors. Respondent also attempted to temper the seriousness of her misconduct by claiming she did not know the documents were fraudulent. Even if true, Respondent's ignorance of the fraudulent content does not change the fact that she could not confirm their authenticity because she did not obtain them directly from the borrowers or their employers. This suggests a cavalier disregard for HUD's regulations. This disregard is further illustrated by the fact that Respondent originated another loan just over a week after the LDP was affirmed.

Serious sanctions such as debarment, LDP, and suspension were found to be warranted in cases where: an executive director of a HUD participant had a duty to discourage the participant's board members from taking actions that violated HUD regulations, but failed to do so, McKinley V. Copeland, HUDBCA No. 00-C-113-D14 (Nov. 29, 2001); a participant's false certification was a material misrepresentation even when there was a lack of intent to mislead HUD, Gabe Brooks, HUDBCA No. 99-A-104-D3 (Sept. 15, 2000); a loan officer falsified loan documents, forged signatures on loan documents, and made false statements for the purpose of influencing loan underwriting decisions in which HUD insured the loans, Marcus Payne, HUDBCA No. 99-9014-DB (May 17, 1999); a respondent made a misrepresentation that, even if it was an "honest mistake, [was], nevertheless, a very serious mistake because HUD must rely upon the truthfulness of the representations made by those who participate in its program and who certify to the accuracy of their representations," William D. Muir and Metro Cmty. Dev. Corp., 00-2 BCA ¶ 31,140, HUDBCA No. 97-A-121-D15 (Nov. 6, 1997); respondents were found to have "failed, repeatedly, to meet their contractual and programmatic obligations to HUD" when they entered into four sales contracts with HUD that never went to closing, M. Brett Young and Allied Hous. Grp., Ltd., HUDALJ 96-0036-DB (Sept. 13, 1996).

After consideration of the applicable factors listed at 2 C.F.R. § 180.860, the Court recommends the maximum sanction of 12 months to be an appropriate LDP period.

Conclusion

Based upon the foregoing, the Court finds the foregoing facts to be true and recommends an LDP to be issued for a period of 12 months.

Alexander Fernández
Administrative Law Judge